

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1065

Biodiesel Fuel

SPONSOR(S): Precourt

TIED BILLS:

IDEN./SIM. BILLS: SB 1730

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Policy Council		Liepshutz	Ciccone
2)	Finance & Tax Council			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Biodiesel fuel is a renewable energy source that can be used to operate motor vehicles and other machinery that is designed to operate with petroleum based diesel fuel. It is produced from feedstock, most notably vegetable oils and animal based fats. This bill provides two exemptions to a public or private secondary school that manufactures less than 1000 gallons of biodiesel fuel for its sole use or the sole use of its employees or students.

The first exemption accords tax-free status to a limited production of biodiesel by the school and, thus, relieves the school from payment of monthly motor fuel taxes on its production of biodiesel and from the recordkeeping and filing of forms necessarily required for the payment of taxes or the claiming of tax refunds or credits.

The second exemption relieves the secondary school from having to:

- Register with the Florida Department of Revenue;
- Pay the fees for the initial application and annual renewals; or
- Secure a bond and file it with the department.

HB 1065 bill does not appear to have a significant fiscal impact on state or local government.

The bill provides an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Biodiesel fuel is a renewable energy source that can be used to operate motor vehicles and other machinery that is designed to operate with petroleum based diesel fuel. It is produced or manufactured from feedstock, most notably vegetable oils and animal-based fats. However, it is most often manufactured from soybeans or recycled restaurant grease through a process called transesterification, which uses an alcohol reactant such as methanol to separate the fatty acid alkyl esters (the biodiesel) from glycerin. Biodiesel is both biodegradable and cleaner burning than petroleum diesel fuel and is usually blended with petroleum diesel in different concentrations, most commonly in a mixture of 20% biodiesel and 80% petroleum diesel (B20).<sup>1</sup>

This bill provides two exemptions to a public or private secondary school that manufactures less than 1000 gallons of biodiesel fuel for its sole use or the sole use of its employees or students. The first exemption accords tax-free status to a limited production of biodiesel by the school and, thus, relieves the school from payment of monthly taxes on its production and from the recordkeeping and filing of forms necessarily required for the payment of taxes or the claiming of tax refunds or credits<sup>2</sup>. Biodiesel falls within Florida's statutory definition of diesel fuel<sup>3</sup> and is subject to the same array of fuel taxes as petroleum based diesel. The total amount of fuel tax on a gallon of biodiesel is currently 29.6 cents and breaks down as follows:

• Excise Tax	4 cents (constitutional 2 cents, county 1 cent, municipality 1 cent)
• Sales Tax	12 cents
• Ninth-cent	1 cent
• Local Option	6 cents
• SCETS Tax	<u>6.6 cents</u>
Total	29.6 cents <sup>4</sup>

<sup>1</sup> Information about biodiesel, including its production, is accessible on the website of the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy at: [http://www1.eere.energy.gov/biomass/abcs\\_biofuels.html#biodprod](http://www1.eere.energy.gov/biomass/abcs_biofuels.html#biodprod)

<sup>2</sup> ss. 206.874, F.S. and 206.8745, F.S. describe the conditions a taxpayer must meet for tax refund or credit eligibility.

<sup>3</sup> s. 206.86(1), F.S.

<sup>4</sup> These taxes are levied on diesel fuel pursuant to s. 206.87(1)(a)-(d) and are allocated primarily, but not exclusively, for state and local transportation purposes. Both the sales tax and SCETS tax (State Comprehensive Enhanced Transportation System Tax) are adjusted annually by the percentage change in the Consumer Price Index; consequently, the current rate per gallon for each tax is greater than the base amount of 6.9 cents specified in s. 206.87(1)(e)1., F.S. for the sales tax and the 6.0 cents specified in ss. 206.87(1)(d) and 206.41(1)(f), F.S. for the SCETS tax.

The second exemption relieves the school from having to register as a wholesaler<sup>5</sup> with the Florida's Department of Revenue (DOR), the \$30 fees for initial registration and annual renewal, and the need to file with DOR a bond<sup>6</sup> executed by a licensed surety company. Although the bill does not specifically define the term "secondary school" or refer to Florida's Education Code for a definition of the term, secondary schools are commonly understood to serve students in grades 6 through 12.<sup>7</sup> Also, while the term "private school" is not defined in the bill, Florida's Education Code provides a definition that includes nonpublic secondary schools that meet the intent of the state's regular school attendance requirements.<sup>8</sup>

The bill does not appear to exempt a school whose production exceeds more than 1000 gallons from having to pay taxes, maintain the appropriate records, or file for credits or refunds on the first 1000 gallons of biodiesel produced. Also, the bill, by implication, would appear to require a secondary school to become properly registered with the DOR whenever its biodiesel production exceeds 1000 gallons in any particular year.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 206.874, F.S., creating a new subsection (7) that grants exemptions from taxation and registration requirements related to the manufacture of limited amount of biodiesel fuel by a public or private secondary school.

**Section 2:** Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The Revenue Estimating Conference has not yet reviewed this bill, but it is anticipated that there will be no impact, or a negligible impact, on the state's fuel tax revenues since the exemption from taxation applies to a relatively small production of biodiesel (1000 gallons) and any taxes that are currently being paid by a secondary school producing biodiesel may already be refundable under existing law. Additionally, any loss of revenue that results from the registration fee exemption in the bill should be minimal, because the \$ 30 fee for the initial application and the annual renewal of the registration is a relatively small amount.

##### 2. Expenditures:

None. In the DOR's analysis of the identical Senate companion, SB 1730 by Senator Oelrich, the department did not anticipate an operational impact from the exemptions provided by the bill.

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<sup>5</sup> DOR does not have a registration category specifically designated as "manufacturer" or "producer." Instead, s. 206.02(5), F.S. requires a biodiesel manufacturer to meet the reporting, bonding, and licensing requirements prescribed for wholesalers. The requirements for registration as a wholesaler, including the fees for the initial application and renewal, are specified in s. 206.02(4).

<sup>6</sup> s. 206.05(1), F.S. specifies the amount and nature of the bond required of a wholesaler. The subsection also authorizes DOR to accept an assigned time deposit or irrevocable letter of credit in lieu of a surety bond.

<sup>7</sup> See, *The Florida Secondary School Redesign Act*, s. 1003.413(1), F.S., stating that secondary schools primarily serve students in grades 6 through 12.

<sup>8</sup> s. 1002.01(2), F.S. provides, in pertinent part, that a "private school," is a nonpublic school defined as an individual, association, co partnership, or corporation, . . . that designates itself as an educational center that includes . . . secondary [schools]. . . . A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. This definition does not include home education programs. . . .

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

No impact or a negligible impact (see, II. A. 1. of this analysis for reasons)

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

An indeterminate amount of savings may accrue to any privately operated secondary school that is already producing biodiesel or any privately operated secondary school that is incentivized to produce biodiesel because of the exemptions this bill provides. The savings will result from the schools not having to pay registration fees, annual renewal fees, or monthly taxes. Schools may also realize savings from not having to maintain records needed for the payment of taxes or the filing for refunds.

**D. FISCAL COMMENTS:**

An indeterminate amount of savings may accrue to any public secondary school that is already producing biodiesel or any public secondary school that is incentivized to produce biodiesel because of the exemptions this bill provides. The savings will result from the schools not having to pay registration fees, annual renewal fees, or monthly taxes. Schools may also realize savings from not having to maintain records needed for the payment of taxes or the filing for refunds.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill may reduce the authority that counties or municipalities have to raise revenues in the aggregate. The bill exempts a secondary school that manufactures less than 1000 gallons of biodiesel from having to pay motor fuel taxes. By providing this exemption, the bill affects both the Local Option Fuel Tax base (6 cents per gallon of biodiesel) and the Ninth-cent fuel tax base (1 cent per gallon of biodiesel). However, the bill would appear to be exempt from application of the mandates provision since it would have an insignificant fiscal impact in the aggregate. The impact would be insignificant, because only secondary schools that produce a very limited amount of biodiesel will qualify for the exemption.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

This bill was filed at the behest of four Oak Hall<sup>9</sup> high school students who, as part of a science project at the Gainesville school, processed used vegetable oil into biodiesel. As reported by the Newspaper in Education (NIE) of the Gainesville Sun, the students encountered a problem they believe the Legislature needs to address:

As the students forged ahead with the development of their program, they encountered what they feel is a somewhat burdensome requirement of state law, which they believe could dissuade other students from pursuing similar biodiesel production products, even as the state looks for alternative energy initiatives to ween (sic) itself off fossil fuels. . . .

The students' issue is with Florida Statute 206, which deals with biodiesel production and taxes on the fuel paid to the state Department of Revenue. . . .

. . . [U]nder the law, schools such as Oak Hall must fill out and submit to the state monthly production reports and pay taxes to the state, but then receive back a tax rebate. Students feel that is a cumbersome, bureaucratic process that could be an obstacle in expanding biodiesel production to other schools.<sup>10</sup>

The Alachua County Commission has expressed support for this legislation:

By providing an exemption from these requirements for educational institutions pursuing a science curriculum, the Legislature could help to foster alternative energy development and practice applications for science curricula across the state of Florida.<sup>11</sup>

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

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<sup>9</sup> Oak Hall is a private school duly registered and listed as a non-profit corporation on the Department of State's website as Oak Hall Private School Inc. :

[http://www.sunbiz.org/scripts/cordet.exe?action=DETFIL&inq\\_doc\\_number=N96000000468&inq\\_came\\_from=NAMFWD&cor\\_web\\_names\\_seq\\_number=0000&names\\_name\\_ind=N&names\\_cor\\_number=&names\\_name\\_seq=&names\\_name\\_ind=&names\\_comp\\_name=OAKHALL&names\\_filing\\_type=](http://www.sunbiz.org/scripts/cordet.exe?action=DETFIL&inq_doc_number=N96000000468&inq_came_from=NAMFWD&cor_web_names_seq_number=0000&names_name_ind=N&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=OAKHALL&names_filing_type=) The school is also listed on the DOR website as a registered blender:  
[http://dor.myflorida.com/dor/taxes/fuel/fuel\\_2.html](http://dor.myflorida.com/dor/taxes/fuel/fuel_2.html)

<sup>10</sup> *Students look to cut red tape on Project*, September 16, 2009; available on-line: <http://www.gainesville-nie.com/?p=399>

<sup>11</sup> *Alachua County, Florida FY 2010 Draft State Legislative Program, Board of County Commissioners*; available on-line: <http://www.alachuacounty.us/documents/bocc/agendas/2009-10-27/afe79c40-ad0f-4c92-936a-cf975f174bac.pdf>  
<http://www.alachuacounty.us/documents/bocc/agendas/2009-10-27/afe79c40-ad0f-4c92-936a-cf975f174bac.pdf>